

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050589-CA
v.)	
)	
George Lewis Alejandre,)	F I L E D
)	(April 6, 2006)
)	
Defendant and Appellant.)	<u>2006 UT App 137</u>

Second District, Ogden Department, 051901394
The Honorable Michael D. Lyon

Attorneys: Randall W. Richards, Ogden, for Appellant
Mark L. Shurtleff and Matthew D. Bates, Salt Lake
City, for Appellee

Before Judges Davis, Orme, and Thorne.

PER CURIAM:

George Lewis Alejandre appeals his sentence for possession of a controlled substance with intent to distribute, a third degree felony, in violation of Utah Code section 58-37-8(1)(a)(iii), and attempted failure to obey a police officer, a class A misdemeanor, in violation of Utah Code section 41-6a-209. See Utah Code Ann. § 58-37-8(1)(a)(iii) (Supp. 2005), id. § 41-6a-209 (2005).

"A sentence will not be overturned on appeal unless the trial court has abused its discretion, failed to consider all legally relevant factors, or imposed a sentence that exceeds legally prescribed limits." State v. Nuttall, 861 P.2d 454, 456 (Utah Ct. App. 1993). "[T]he exercise of discretion in sentencing necessarily reflects the personal judgment of the court and the appellate court can properly find abuse only if it can be said that no reasonable [person] would take the view adopted by the trial court." Id. (second alteration in original) (quoting State v. Gerrard, 584 P.2d 885, 887 (Utah 1978)).

Alejandre argues that the trial court abused its discretion by sentencing him to an indeterminate prison term of zero to five years, rather than probation, because it "failed to consider all the legally relevant factors and it imposed an excessive sentence." Specifically, Alejandre alleges that the trial court failed to consider his rehabilitative needs and lack of criminal history.

In support of this argument, Alejandre relies solely on State v. Galli, 967 P.2d 930 (Utah 1998). However, Galli construed only the consecutive sentencing statute--Utah Code section 76-3-401--which requires the trial court to consider a defendant's rehabilitative needs and criminal history. See Galli, 967 P.2d at 938; see also Utah Code Ann. § 76-3-401(2) (2003). This case does not involve consecutive sentencing. Instead, the trial court ordered the one-year misdemeanor sentence to run concurrent with the sentence imposed for the felony conviction--a single indeterminate prison term of zero to five years pursuant to Utah Code section 76-3-203(3). See Utah Code Ann. § 76-3-203(3) (2003). Thus, Galli is inapplicable.

Alejandre otherwise fails to show that the trial court imposed an "excessive sentence." To the contrary, the sentence imposed was clearly within the statutory guidelines. Alejandre pleaded guilty to possession of a controlled substance with intent to distribute, a third degree felony. See Utah Code Ann. § 58-37-8(1)(a)(iii). Utah Code section 76-3-203 permits indeterminate sentencing "[i]n the case of a felony of the third degree . . . for a term not to exceed five years." Id. § 76-3-203(3).

Accordingly, the sentence is affirmed.

James Z. Davis, Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge